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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,828

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Eric Paul Lahusen

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EXAMINER

SMALLEY, JAMES N

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/568,828	<b>Applicant(s)</b> LAHUSEN, ERIC PAUL	
	<b>Examiner</b> JAMES N. SMALLEY	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7 and 9-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 10, 12, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 11, 13-21 and 24-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 23, 2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-5, 7 and 9-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1, from which the remaining claims depend, limits "at least one first segment being realized as an inner cap" and "at least one second segment being realized as an outer cap." Examiner notes there is no support in the Specification for there being more than one inner cap and more than one outer cap. The background of the invention, on page 2, talks about "at least one first segment and the at least one second segment"; however, these passages do not comprise adequate support for more than one inner cap and more than one outer cap, because they do not provide any technical guidance for one of ordinary skill to make and use the embodiment.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 7, 9, 12, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Duty et al. US 5,265,744.

**Regarding claim 1**, Duty '744 teaches an inner cap (20), an outer cap (40) capable of relative rotation to the inner cap, and having a transparent portion (58), and the inner cap having an indicator area (34, 36) which is permanently modified (by rupturing once the caps are pressed for relative rotation in order to remove them from the container).

**Regarding claim 2**, the perceivable property is color, as described in column 6, lines 37-53 with regard to the embodiment of Figures 8 and 9.

**Regarding claim 3**, the caps are formed of plastic, and are thus rigid and are moved relative to one another.

**Regarding claim 4**, first section (44) retains the inner cap within the outer cap, and interlocking elements (32, 54) allow for relative rotation.

**Regarding claim 5**, the inner and outer caps have cylindrically-shaped sidewalls, and are thus read as "cylindrical."

**Regarding claim 7**, the inner cap is located concentrically within the outer cap, as best seen in Fig. 2.

**Regarding claim 9**, the inner cap has threads (28) to mate with container threads (16).

**Regarding claim 12**, relative movement between the inner and outer caps can occur with radial rotation.

**Regarding claim 22**, the embodiment of Figs. 8 and 9 teaches an indicator made of a material (two separate chambers of fluid (62, 64) which mix to create a color change, because of a predetermined manner (pushing the outer cap down with respect to the inner cap to crush the capsule (36) and create the perceivable property change.

**Regarding claim 23**, the axial relative movement is read as mechanical action.

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***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duty et al. US 5,265,744 as applied above under 35 U.S.C. 102(b) to claim 1, and further in view of Kusz US 5,188,251.

Duty '744 teaches all limitations substantially as claimed, but fails to teach at least one of a collar, rail or ring on the inner and outer cap to move the outer cap on the inner cap in a preferred direction.

Kusz '251 teaches a closure comprising an inner and outer cap which can be fixed relative to each other by the interlocking of axial rails (42) and ramp rails (43, 44) in addition to a connection between their top walls at radial rib (39, 40) and surface (41). The additional connections along the axial rails results in distributing the forces over a larger surface area, which prevents fracture of the working parts.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Duty '744, providing the rails taught by Kusz '251, motivated by the benefit of distributing the forces over a larger surface area, reducing stress. The axial rails thus help the axial movement occur along a preferred area.

***Response to Arguments***

9. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

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***Allowable Subject Matter***

9. Claims 11, 13-21 and 24-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/  
Supervisory Patent Examiner, Art Unit  
3781

/James N Smalley/  
Examiner, Art Unit 3781